

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

IN RE YAHOO! INC. SECURITIES
LITIGATION

Case Nos. 17-CV-00373-LHK,
17-CV-01525-LHK

**ORDER GRANTING IN PART AND
DENYING IN PART MOTION FOR
AWARD OF ATTORNEYS' FEES,
REIMBURSEMENT OF EXPENSES,
AND AWARDS FOR PLAINTIFFS**

Re: Dkt. No. 107

This matter came on for hearing on September 6, 2018 (the "Settlement Hearing") on Plaintiffs' motion for an award of attorneys' fees, reimbursement of litigation expenses, and awards for named Plaintiffs. The Court having considered all matters submitted to it at the Settlement Hearing and otherwise; and it appearing that notice of the Settlement Hearing substantially in the form approved by the Court was mailed to all Settlement Class Members who or which could be identified with reasonable effort, and that a summary notice of the hearing substantially in the form approved by the Court was transmitted over the PR Newswire pursuant to the specifications of the Court; and the Court having considered and determined the fairness and

reasonableness of the award of attorneys' fees and litigation expenses requested,

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. This Order incorporates by reference the definitions in the Stipulation and Agreement of Settlement dated March 2, 2018 (the "Stipulation") (ECF No. 74) and all capitalized terms not otherwise defined herein shall have the same meanings as set forth in the Stipulation.

2. The Court has jurisdiction to enter this Order and over the subject matter of the Action and all parties to the Action, including all Settlement Class Members.

3. Notice of Co-Lead Counsel's motion for an award of attorneys' fees and reimbursement of litigation expenses was given to all Settlement Class Members who could be identified with reasonable effort. The form and method of notifying the Settlement Class of the motion for an award of attorneys' fees and expenses satisfied the requirements of Rule 23 of the Federal Rules of Civil Procedure, the Private Securities Litigation Reform Act of 1995 ("PSLRA") (15 U.S.C. § 78u-4(a)(7)), due process, and all other applicable law and rules, constituted the best notice practicable under the circumstances, and constituted due and sufficient notice to all persons and entities entitled thereto.

4. The Court GRANTS the request for attorneys' fees and litigation expenses. Co-Lead Counsel are hereby awarded attorneys' fees in the amount of \$14,400,000—namely, 18% of the \$80,000,000 Settlement Fund—and \$353,282.72 in reimbursement of Plaintiffs' Counsel's litigation expenses (which fees and expenses shall be paid from the Settlement Fund), which sums the Court finds to be fair and reasonable. Co-Lead Counsel shall allocate the attorneys' fees awarded in a manner which they, in good faith, believe reflects the contributions of such counsel to the institution, prosecution, and settlement of the Action.

a. The Settlement has created a fund of \$80,000,000 in cash that has been funded into escrow pursuant to the terms of the Stipulation, and that numerous Settlement Class Members who submit valid Claim Forms will benefit from the Settlement that occurred because of the efforts of Co-Lead Counsel;

c. Copies of the Notice were mailed to over 802,987 potential Settlement Class Members and nominees stating that Co-Lead Counsel would apply for attorneys' fees of up to \$20,000,000 (or 25% of the Settlement Fund), reimbursement of Co-Lead Counsel's litigation expenses in an amount not to exceed \$750,000, and awards for Plaintiffs for their reasonable time in representing the Settlement Class in an amount not to exceed \$275,000 in the aggregate; and no objections to the requested attorneys' fees and expenses or requested awards to Plaintiffs were received;

e. The Action raised a number of complex issues;

g. Co-Lead Counsel's claimed lodestar of approximately \$7.2 million (based on a total of 16,837 hours) appears high. However, even with this high lodestar, Plaintiffs'

1 requested attorneys' fee award of \$14.4 million results in a multiplier of 2, which falls within the
2 range of multipliers approved in previous cases, *see, e.g., Vizcaino v. Microsoft Corp.*, 290 F.3d
3 1043, 1051 (9th Cir. 2002) (approving multiplier of 3.65); and

4 h. The amount of attorneys' fees awarded and expenses to be reimbursed from
5 the Settlement Fund are fair and reasonable and consistent with awards in similar cases.

6 6. The Court DENIES the request for awards of \$235,200 to named Plaintiff Ben
7 Maher; \$7,500 to named Plaintiff Sutton View Partners LP; and \$7,500 to named Plaintiff Nafiz
8 Talukder. Under the PSLRA, "[t]he share of any final judgment or of any settlement that is
9 awarded to a representative party serving on behalf of a class shall be equal, on a per share basis,
10 to the portion of the final judgment or settlement awarded to all other members of the class." 15
11 U.S.C. § 78u-4(a)(4). Nevertheless, courts may award any "reasonable costs and expenses
12 (including lost wages) directly relating to the representation of the class to any representative party
13 serving on behalf of a class." *Id.* In order to receive an award beyond their class compensation, the
14 named plaintiffs must "demonstrat[e] that the requested [award] amounts represent actual costs
15 and expenses incurred directly as a result of the litigation." *In re TVIA Inc. Sec. Litig.*, No. 06-CV-
16 06304-RMW, 2008 WL 2693811, at *2 (N.D. Cal. July 7, 2008).

17 Although the PSLRA specifically states that lost wages constitute "reasonable costs and
18 expenses," courts have held that lost sales commissions, lost earning opportunities, out-of-pocket
19 expenses, and foregoing employer-granted vacation time also constitute "reasonable costs and
20 expenses." For example, in *Abrams v. Van Kampen Funds, Inc.*, the court held that "[named]
21 plaintiffs do not contend that any portion of the requested amount represents any actual expenses
22 that either has incurred. They do not claim that they missed any work or other earning opportunity
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1 in order to participate in the litigation.” No. 01-CV-07538-WTH, 2006 WL 163023, at *4 (N.D.
2 Ill. Jan. 18, 2006).

3 Similarly, in *In re AMF Bowling*, the court held that “[n]othing presented . . . places the
4 time devoted to this case by the two [named plaintiffs] into the category of a recoverable expense.
5 Neither claims any out-of-pocket expense. There is no assertion that either lost time at work or
6 gave up employer-granted vacation time. Neither cites to lost sales commissions nor missed
7 business opportunities.” 334 F. Supp. 2d 462, 470 (S.D.N.Y. 2004).
8

9 In the instant case, the three named Plaintiffs do not claim that they lost wages, missed any
10 work or other earning opportunities, or incurred any out-of-pocket expenses to participate in this
11 litigation. They do not cite to lost sales commissions or any foregoing of employer-granted
12 vacation time. In fact, each of the three named Plaintiffs requests a “compensatory award . . . in
13 light of my time and effort expended in pursuing this action.” ECF Nos. 108-4 ¶ 21, 108-5 ¶ 12,
14 108-6 ¶ 15. “Under the PSLRA, [named] plaintiffs cannot be awarded additional compensation.”
15 *Abrams*, 2006 WL 163023, at *4. Such compensatory awards do not constitute “reasonable costs
16 and expenses” that may be reimbursed under the PSLRA.
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18 Moreover, the three named Plaintiffs provide conclusory estimates of the hours spent on
19 this case and their billing rates. ECF Nos. 108-4, 108-5, 108-6. The three named Plaintiffs have
20 not substantiated their requested hours or billing rates with adequate documentation or evidence.
21

22 Accordingly, the request for awards to named Plaintiff Ben Maher, named Plaintiff Sutton
23 View Partners LP, and named Plaintiff Nafiz Talukder is DENIED.

24 7. Any appeal or any challenge affecting this Court’s approval regarding any
25 attorneys’ fees and expense application or denial regarding awards to any of the named Plaintiffs
26 shall in no way disturb or affect the finality of the Judgment.
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9. In the event that the Settlement is terminated or the Effective Date of the Settlement otherwise fails to occur, this Order shall be rendered null and void to the extent provided by the Stipulation.

IT IS SO ORDERED.

Lucy H. Koh
LUCY H. KOH
United States District Judge